

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.

SUPERIOR COURT

The State of New Hampshire

v.

Michael Addison

Docket No. 06-S-2499

WMUR-TV CHANNEL 9 MOTION TO AMEND MEDIA ORDER

NOW COMES WMUR-TV Channel 9 (hereinafter "WMUR-TV") and moves the Court pursuant to paragraph 8 of the Amendment to Media Order dated December 27, 2006 ("Media Order"), to reconsider and amend the Media Order as follows:

1. Amend paragraph 2 to permit, subject to Superior Court Rule 78, live video and audio feeds of all court proceedings other than jury selection. WMUR-TV seeks this amendment because live coverage of this landmark capital murder case will serve the public interest and the interests of justice for the following reasons:

- This case that has generated extraordinary public interest because of the nature of the crime, the identity of the victim, and the punishment the State seeks: the murder of Manchester police officer, Michael Briggs, married and the father of two young children, for which the State seeks, for the first time in more than 60 year, the death penalty. There is no reason to anticipate that public interest will in any way diminish as the case proceeds to and through trial.
- Given what is known about the case, including the legal and public policy issues it raises, it is precisely the type of case that the public should have

the means of understanding what transpires at every stage of the case.

That understanding can best be served by live coverage of all judicial proceedings, pre-trial, trial, and post-trial.

- Live coverage will give meaning to a fundamental proposition recognized by the United States Supreme Court 60 years ago: "A trial is a public event. What transpires in the court room is public property." *Craig v. Harney*, 331 U.S. 367, 374 (1947). Live coverage will enable the public to have a "front row seat" to observe and assess everything that takes place in the courtroom just as though it was in attendance.
- Live coverage would enable WMUR-TV to "stream" its feed on the WMUR-TV website, www.wmur.com, and broadcast "live" on Channel 9 significant portions of important proceedings in the case.
- On the other hand, if live coverage is not permitted WMUR-TV would be confronted with the prospect of streaming and airing only selected portions of this landmark case, which in no way would provide the public with the information - both in terms of content and context - to enable it to understand and evaluate the State's case or Mr. Addison's defense.
- No legitimate state interest would be served by permitting WMUR-TV to make video-audio recordings of the proceedings in the case but not air them simultaneously. Moreover, should the Court, for whatever reason, limit or restrict what can be aired, it would constitute an impermissible prior restraint on publication.

2. Amend paragraph 3.f. by specifying where WMUR-TV may place its microphones in the courtroom to ensure that its audio recording picks up for broadcast all audible portions of the proceedings permitted by the Media Order.

3. In support of the amendment sought by paragraph 1. hereof, WMUR-TV relies upon *In re WMUR Channel 9*, 148 N.H. 644, 650-651 (2002), where the Supreme Court stated:

Allowing cameras in all courtrooms, with prior notice to the clerk and consent from the trial judge under standing orders, and restricting or prohibiting cameras only upon specific findings made *sua sponte* by the trial judge or upon a party's request to limit camera use in the courtroom, will ensure that a proper balance is maintained between maximizing technology use by the media and conducting a fair trial by the court.

* * *

A trial judge should permit the media to photograph, record and broadcast all courtroom proceedings that are open to the public. A judge may limit electronic media coverage if there is a substantial likelihood of harm to any person or other harmful consequence.

* * *

After conducting a hearing, a trial judge should make specific findings of fact to support any decision limiting or prohibiting such coverage. Fear of jurors being exposed to potentially prejudicial information or of witnesses being exposed to the testimony of other witnesses generally will not be a valid basis for denying electronic coverage. The trial court's findings should not be based upon speculation, but rather upon the specific facts of the case at hand.

4. Consistent with the principles enunciated in *In re WMUR Channel 9*, Superior Court Rule 78(f) expressly permits "live coverage" of all courtroom proceedings open to the public.

5. On the basis of information and belief, WMUR-TV avers that the record before this Court does not establish that live coverage would result in "a substantial likelihood of harm to any person or other harmful consequence." *In re WMUR Channel 9*, 146 N.H. at 650.

6. At Defendant's arraignment in Manchester District Court, Presiding Justice William H. Lyons, permitted WMUR-TV to provide live coverage, which in no way interfered with or affected the solemnity of the proceeding or rights of the parties.

7. WMUR-TV has sought the assent of counsel for the State and Defendant to the relief requested by this motion, but they deferred taking a position until they have the opportunity to review the motion and relief sought.

WHEREFORE, WMUR-TV respectfully urges the Court to grant this motion and to amend the Media Order by:

- A. permitting live coverage of all proceedings in the case pursuant to Superior Court Rule 78;
- B. specifying where WMUR-TV may place its microphones in the courtroom to ensure that its audio recording picks up for broadcast all audible portions of the proceedings permitted by the Media Order;
- C. provide WMUR-TV with notice of all judicial proceedings scheduled in the case so it can comply with the live coverage five-day advance notice requirement set forth in Superior Court Rule 78(f); and
- D. grant such other and further relief as may be necessary.

Respectfully submitted,

WMUR-TV Channel 9

By their attorneys,

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Date: February 7, 2007

By: William L. Chapman
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William L. Chapman

CERTIFICATE OF SERVICE

I, William L. Chapman, Esquire, certify that on this 7th day of February, 2007 a copy of the foregoing Motion to Amend has been forwarded via first-class mail to Jeffery A. Strelzin, Esq., Richard Guerriero, Esq., and Gregory V. Sullivan, Esq., counsel of record.

William L. Chapman
William L. Chapman

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